

SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES

I.

Introduction

The State Personnel Board (Board) proposes to amend Sections 67.6 & 67.7 of Title 2, Chapter 1, of the Code of Regulations (CCR). A 45-day public comment period on this rulemaking action was held from May 21, 2022, through July 5, 2022. A public hearing was held on July 6, 2022. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board's responses are below.

II.

Summary of Written/Oral Comments from Melinda L. Williams, Attorney III, California Department of Water Resources (DWR).

Comment 1:

The DWR believes proposed section 67.6, subdivision (a)(3), is too broad and should be amended to include only supervisors, managers, employees, or appointing authorities who have been "found" to have engaged in retaliatory acts. In order to provide clarity, the DWR recommends that the following language be added to subdivision (a)(3): "Any supervisor, manager, employee, or appointing authority who is not a named party to the retaliation complaint, but the Findings have "found" those persons have engaged in retaliatory acts." This addition would ensure those persons also receive notice of the findings since they would not have been "parties" to the complaint. Moreover, the appointing power might not have been "found" to have engaged in these actions, but under subdivision (a), there is already proposed language indicating that sending the Findings are not limited to those specified in (1), (2) or (3).

Response 1:

The Board thanks and appreciates the DWR for its feedback to this regulatory package. The Board agrees with the DWR's concern that section 67.6, subdivision (a), is too broad and will modify the text in section 67.6, subdivision (a), to ensure that only those supervisors, managers, employees, or appointing authorities found to have engaged in retaliatory acts receive a notice of finding (NOF).

Comment 2:

The DWR suggests adding the following language to section 67.7, subdivision (d): “The Board should also provide all substantiating documentation that it relied on to make its Findings that the person/entity has engaged in improper retaliatory acts, at the time the Findings are provided to the appointing power and the person/entity.” As such, this would help the appointing power to determine what, if any, action might be appropriate for that person/entity who/which was not named a party by the Complainant, and have that action served by the 60 calendar days specified in subdivision (d)(1).

Response 2:

Prior to receiving the final decision, the appointing power and any other party of interest generally would have participated in proceedings before the Board related to the whistleblower retaliation complaint. Therefore, as part of that participation, they would have received or at least been made aware of any facts and/or substantiating documentation referenced in DWR’s comment. However, the Board agrees that including clarifying language stating that the Board must provide a copy of the final decision to the appointing power would be beneficial.

III.

Conclusion:

The Board appreciates the comments and feedback it received regarding this proposed amendment. The modified text with the changes clearly indicated are available to the public as stated in the Notice of Modification to Text of Proposed Regulation.